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Public Employees for Environmental Responsibility

2001 S Street, NW • Suite 570 • Washington, D.C. 20009 • 202-265-PEER(7337) • fax: 202-265-4192
e-mail: info@peer.org • website: http://www.peer.org

RECEIVED

February 2, 2001

FEB 07 2001

FCC MAIL ROOM

URGENT

The Honorable Michael K. Powell
Chairman, Federal Communications Commission
and Mr. Donald Abelson, Bureau Chief
International Bureau ("IB")
Federal Communications Commission ("FCC")
445 12th Street, S.W.
Washington, D.C. 20554

BY FIRST CLASS POST

Re: *Request for an Emergency Administrative Injunction i.c.o. Sunny Isles, FL
(25 55' 50" N.; 80 07' 00" W.)(Parallel Filing in FCC Dkt. No. RM-9913)*

Dear Chairman Powell and Bureau Chief Abelson:

Pursuant to Sections 1.41 and 1.65(a) of the Commission's rules, Public Employees for Environmental Responsibility ("PEER") hereby supplements its January 26, 2000 petition, requesting an immediate freeze on final approval for the ARCOS-1 System Conduit and Cable Installation and the submarine cable landing license issued in support of the same. 47 C.F.R. §§ 1.41, 1.65(a).

PEER has received information regarding the completion of the State of Florida's environmental review which indicates the ARCOS-1 System Conduit and Cable Installation will significantly effect environmental resources along the Florida Coast. See *Consolidated Notice of Intent to Issue Environmental Resource Permit and Private Easement to Use Sovereign Submerged Lands* (COM TECH International Cable Corporation)(Florida Department of Environmental Protection File No. 13-0171515-001) [Attached as Exhibit "A"].

Number of Copies rec'd 6
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PEER concedes that it is Commission policy to classify submarine cable laying under a categorical exclusion to those major federal actions which require the undertaking of an EA or an Environmental Impact Statement ("EIS") 47 C.F.R. § 1.1306 n.1. However, the CEQ regulations permitting such exclusions are preconditioned on the action or series of actions having "no effect" on the environment. 15 C.F.R. § 1508.4. And while the integrity of the Commission's rulemaking on this matter may be dated, that should be no reason to ignore evidence of significant effect when it is examined and acted up in a peer jurisdiction, notably the State of Florida. Given the material presented in Exhibit A, it is now clear that a significant effect is about to occur on the coast of Florida, and will do so under the color of FCC authority. This will place the Commission in violation of federal law. *Consolidated Notice of Intent to Issue Environmental Resource Permit and Private Easement to Use Sovereign Submerged Lands* (COM TECH International Cable Corporation)(Florida Department of Environmental Protection File No. 13-0171515-001) [Attached as Exhibit "A"] (Note the section marked "Specific Conditions", No. 5, on page 6 of the incorporated *Consolidated Environmental Resource Permit and Intent to Grant Sovereign Submerged Lands Authorization* (Draft) ("The permittee shall implement the following Best Management Practices (BMPs) to minimize the potential for adverse environmental impacts during conduit installations . . . "[Emphasis supplied.]).

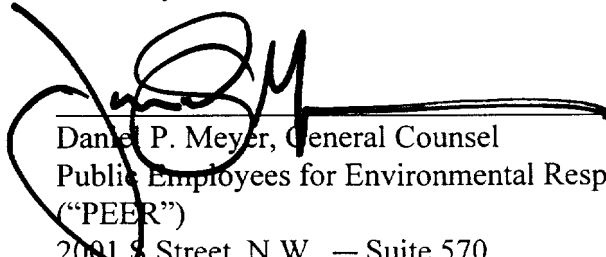
And where is the Commission's like-minded analysis to meet compliance with the National Environmental Policy Act of 1969? Note that the Florida documentation not only recognizes potential impacts, but guards against actual anticipated effects on the reef. *Id.* (See attached Exhibit I, *Mitigation Plan*, establishing proactive remedies for the loss of actual coral reef and hard bottom, the freeing of soft corals pinned to the bottom, and the cementing of cracked corals dislodged by the cable laying process.)

PEER can find no FCC filing by COM TECH that amends its submarine cable landing license to document the environmental impacts which formed the conditions to COM TECH's application before the State of Florida. The applicant intends to land its cable on February 18, 2001. COM TECH's 30-day deadline for filing an amendment to its FCC application will not expire until February 28, 2001, after the environmental damage has been incurred. See 47 C.F.R. § 1.659(a). Without an amendment to the COM TECH submarine cable landing license application, the Commission will be unable to determine whether it must condition final approval on the production of an Environmental Assessment ("EA"). Did COM TECH file its coordinates within ninety (90) days of February 18, 2001, and if it did so, has it amended its application to inform the Commission of the environmental concerns noted in Exhibit A of this emergency request?

Immediate action is required to bring the FCC into compliance with the National Environmental Policy Act of 1969. As damage to coral reefs is irreversible, the impending danger to the environment is significant enough to require an administrative injunction. Please expedite your decision by making a final determination no later than February 10, 2001.

PEER also requests that this document be filed in the docket for RM-9913.

Cordially,



Daniel P. Meyer, General Counsel
Public Employees for Environmental Responsibility
("PEER")
2001 S Street, N.W. — Suite 570
Washington, D.C. 20009
Tele: (202) 265.7337
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E/ml: dmeyer@peer.org

District of Columbia Bar No. 455369

PEER Environmental Law Clerks, 2000

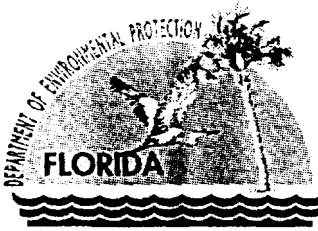
Gregory R. Jones, Georgetown (1L)
Macall S. Robertson, Georgetown (1L)

CC: George T. Frampton, Chair
Council on Environmental Quality

Magalie Roman Salas, Secretary (FCC)
(for filing in FCC Dkt. RM-9913)

Attached: Exhibit A, *Consolidated Notice of Intent to Issue Environmental Resource Permit and Private Easement to Use Sovereign Submerged Lands* (COM TECH International Cable Corporation)(Florida Department of Environmental Protection File No. 13-0171515-001).

Exhibit A



Jeb Bush
Governor

Department of Environmental Protection

Southeast District
P.O. Box 15425
West Palm Beach, Florida 33416

David B. Struhs
Secretary

JAN 29 2001

In the Matter of an
Application for Permit/Water Quality Certification,
and Authorization to Use Sovereign Submerged Lands by:

APPLICANT:

COM TECH International Cable Corporation
c/o Jeff Fleisher, Vice President
2977 McFarlane Road, Suite 300
Coconut Grove, FL 33131

PROJECT NAME: ARCOS-1 System Conduit and

Cable Installations
File No: 13-0171515-001
County: Miami-Dade

CONSOLIDATED NOTICE OF INTENT TO ISSUE ENVIRONMENTAL RESOURCE PERMIT AND PRIVATE EASEMENT TO USE SOVEREIGN SUBMERGED LANDS

The Department of Environmental Protection gives consolidated notice of its intent to:

- (a) issue an environmental resource permit under Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.) (draft copy of permit attached). Issuance of the environmental resource permit also constitutes certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341;
- (b) grant a Private Easement to use sovereign submerged lands for the proposed activity, under Article X, Section 11 of the Florida Constitution, Chapter(s) 253, F.S., and Title 18, F.A.C., as described below.

Where applicable (such as activities in coastal counties), issuance of the environmental resource permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

I. DESCRIPTION OF THE PROPOSED ACTIVITY

The applicant, COM TECH International Cable Corporation, applied on June 20, 2000, to the Department of Environmental Protection for a permit/water quality certification and authorization to use sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to install an oceanic fiber optic cable system, ARCOS-1, from the state's three-mile territorial limit landward to a manhole landing within the parking lot of the Newport Hotel and Resort in Sunny Isles. In order to offset the impacts to coral reef and hardbottom communities resulting from the laying of the two fiber optic cables, the permittee shall place a minimum of thirty (30) DERM-type reef modules within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Each module will provide approximately 54 square feet of mitigation for a total of 1,620 square feet. Following the cable installations, the permittee shall re-run the NOAA Habitat Equivalency Analysis model (HEA) based on actual, post lay measurements and adjust the mitigation upwards, if such calculations indicate that more than 30 modules are needed to fully compensate for actual impacts. Differential Global Positioning

"More Protection, Less Process"

Printed on recycled paper.

System (DGPS) coordinates will be provided for the mitigation site to mark the area for future monitoring.

The activity includes consideration of an application for a 25-year sovereignty submerged lands private easement containing 563,113 square feet, more or less, for three conduits and two fiber optic cables, with one conduit being reserved for future cable repair or replacement, on and under sovereignty submerged lands of the territorial sea out to the state's territorial limit, which requires payment of: (1) An initial one-time easement fee at a rate of \$0.0057 per square foot as determined by a real property appraisal that considered the extent to which the easement is exclusionary, but did not consider the "enhanced value or profit gained by the applicant" pursuant to section 18-21.011(2)(b)2, F.A.C.; (2) an interim "enhanced value or profit gained" fee of \$5.00 per linear foot of cable that crosses sovereign submerged lands of the territorial sea out to the state's territorial limit; (3) a fee for the severance of sovereign material calculated at a rate of \$2.25 per cubic yard pursuant to section 18-21.011(3)(a)2, F.A.C. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The initial one-time easement fee and interim "enhanced value" fee shall be determined based upon receipt of an acceptable survey and legal description of the easement area. The easement fee may be revised upward or downward at a later date should the Board of Trustees adopt rules revising the fees for easements, or establish different procedures for determining the "enhanced value or profit gained by the applicant."

The project is located within the Atlantic Ocean (Class III Waters) adjacent to the Newport Hotel and Resort on the corner of State Road 826 and Collins Avenue, City of Sunny Isles Beach (Section 11, Township 52 South, Range 42 East) in Miami-Dade County. The three HDD punch out sites are located approximately between Latitude 25° 55'55"N, Longitude 80° 06'57"W and Latitude 25° 55'52"N, Longitude 80° 06'57"W on the seafloor. The path of the cables laid on the seafloor will be shown in sketches that will accompany the easement associated with this project.

II. AUTHORITY FOR REVIEW

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapters 62-330, 62-341 and 62-343, F.A.C. The activity is not exempt from the requirement to obtain an environmental resource permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application.

The activity also requires a proprietary authorization, as it is located on sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund. The activity is not exempt from the need to obtain a proprietary authorization. Pursuant to Article X, Section 11 of the Florida Constitution, Sections 253.002 and 253.77, F.S., Sections 18-21.00401 and 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department has the responsibility to review and take final action on this request for proprietary authorization.

III. BACKGROUND/BASIS FOR ISSUANCE

A. General

The applicant proposes to do the following: a) install a precast concrete manhole within the parking lot of the Newport Hotel and Resort; b) install three 5.75-inch diameter steel subaqueous conduits and two associated fiber-optic cables under the Atlantic Ocean by horizontal directional drilling (HDD);

and c) install two cables to serve COM TECH International Cable Corporation's ARCOS-1 System connecting the Florida cable system with the Bahamas, the Turks and Caicos Islands, the Dominican Republic, Puerto Rico, and the South and Central Americas. The third remaining conduit will not have a cable installed at this time.

The NOAA HEA was employed to estimate the required area for mitigation or compensatory habitat creation associated with natural resource impacts within the cable corridor. Using available data from past fiber optic cable deployments and also using a "worst case" impact scenario, the HEA indicated that approximately 1 to 4.88 modules per cable would compensate for anticipated impacts. In order to offset the impacts to coral reef and hardbottom communities, the permittee has offered a minimum of thirty (30) DERM-type artificial reef modules, 15 modules per cable, as added public interest. These modules will be placed on the ocean floor within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Each module will provide approximately 54 square feet of mitigation for a total of 1,620 square feet. The permittee shall re-run the HEA based on actual post lay measurements and adjust mitigation upwards if such calculations indicate that more than 30 modules are needed to fully compensate for actual impacts. Differential Global Positioning System (DGPS) coordinates will be provided for the mitigation site to mark the area for future monitoring.

B. Specific Regulatory Basis for Issuance

Through the above and based on the general/limiting and specific conditions to the permit, the applicant has provided affirmative reasonable assurance that the construction and operation of the activity, considering the direct, secondary and cumulative impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder, including the Conditions for Issuance or Additional Conditions for Issuance of an environmental resource permit, pursuant to Part IV of Chapter 373, F.S., Chapters 62-330, and Sections 40E-4.301 and 40E-4.302, F.A.C. The construction and operation of the activity will not result in violations of the water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C. The applicant has also demonstrated that the construction of the activity, including a consideration of the direct, secondary, and cumulative impacts, is not contrary to the public interest, pursuant to paragraph 373.414(1)(a), F.S.

C. Specific Proprietary Basis for Issuance

Through the above and based on the special conditions to the Private Easement, the applicant has met all applicable requirements for proprietary authorizations to use sovereign submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, Chapter(s) 253, F.S., and associated Rule(s) 18-21, F.A.C. The applicant has provided reasonable assurance that the activity:

- (1) is "not contrary to the public interest";
- (2) will maintain essentially natural conditions;
- (3) will not cause adverse impacts to fish and wildlife resources or public recreation or navigation; and
- (4) will not interfere with the riparian rights of adjacent property owners.

In addition, the project is consistent with the goals and objectives of the "Conceptual State Lands Management Plan" adopted by the Board of Trustees on March 17, 1981 and modified on March 15, 1983.

IV. PUBLICATION OF NOTICE

The Department has determined that the proposed activity, because of its size, potential effect on the environment or the public, controversial nature, or location, is likely to have a heightened public concern or likelihood of request for administrative proceedings. Therefore, pursuant to Section 373.413(4), F. S., and paragraphs 62-110.106(7) and 62-343.090(2)(k), F.A.C., you (the applicant) are required to publish at your own expense the enclosed notice of this Consolidated Notice of Intent to Issue. The notice is required to be published one time within 30 days, in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031 of the Florida Statutes, in the county where the activity is to take place. Where there is more than one newspaper of general circulation in the county, the newspaper used should be one with significant circulation in the area that may be affected by the permit. If you are uncertain that a newspaper meets these requirements, please contact the Department at the address or telephone number listed below. The applicant shall provide proof of publication to:

Department of Environmental Protection
Southeast District
Environmental Resources Permitting
P.O. Box 15425
West Palm Beach, FL 33416

The proof of publication shall be provided to the above address within seven days of publication. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the permit and Private Easement to use sovereign submerged lands.

V. RIGHTS OF AFFECTED PARTIES

Under this intent to issue, the permit and intent to grant a private easement on sovereign submerged lands are hereby granted subject to the applicant's compliance with any requirement in this intent to publish notice of this intent in a newspaper of general circulation and to provide proof of such publication in accordance with section 50.051 of the Florida Statutes. This action is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this intent to issue automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. When proof of publication is provided, if required by this intent, and if a sufficient petition is not timely filed, the permit and intent to grant an easement will be executed. The actual terms of the easement will be formally executed at a later date and shall include provisions for rents and such other provisions as normally are included in such easement. Because an administrative hearing may result in the reversal or substantial modification of this action, the applicant is advised not to commence construction or other activities until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired and until the permit and intent to grant an easement have been executed and delivered.

Mediation is not available.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Under rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

In accordance with rules 28-106.111(2) and 62-110.106(3)(a)(4), petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;

Permittee: COM TECH International Cable Corporation

File No.: 13-0171515-001

Page 6

- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

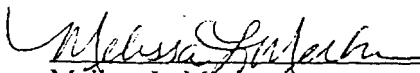
Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This intent to issue constitutes an order of the Department on its own behalf on the application for the regulatory permit, and on behalf of the Board of Trustees of the Internal Improvement Trust Fund on the application to use sovereignty submerged lands. Subject to the provisions of paragraph 120.68(7)(a) of the Florida Statutes, which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under section 120.68 of the Florida Statutes, by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the order is filed with the Clerk of the Department.

The applicant, or any party within the meaning of section 373.114(1)(a) or 373.4275 of the Florida Statutes, may also seek appellate review of the order before the Land and Water Adjudicatory Commission under section 373.114(1) or 373.4275 of the Florida Statutes. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

Executed in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

 1/29/01
Melissa L. Meeker Date
Director of District Management
Southeast District

Permittee: COM TECH International Cable Corporation
File No.: 13-0171515-001
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MLM/mcm/tr/jb

Copies furnished to:

U. S. Army Corps of Engineers
Brian Flynn, Coastal Programs Administrator, Miami-Dade DERM
Kim Dupree, DEP, Division of State Lands
Florida Marine Patrol
Karen Moody, FFWCC, Bureau of Protected Species
Walt Jaap, FMRI, 100 8th Avenue SE, St. Petersburg, FL 333432
Alexander Stone, Reefkeeper International, 2809 Bird Ave., Miami, FL 33133
Dan Meyer, PEER, 2001 S Street, NW - Suite 570, Washington, D.C. 20009
Steve Medina, PEER, P. O. Box 247, Ft. Walton Beach, FL 32549-0247
Larry Zuckerman, 4719 Satinwood Trail, Coconut Creek, FL 33063
Stephanie Clark, Cry of the Water, P.O. Box 8143, Coral Springs, FL 33075
Michael S. Tammaro, P.O. Box 150, West Palm Beach, FL 33404

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this CONSOLIDATED
INTENT TO ISSUE and all copies were mailed before the close of business on JAN 29 2001,
to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date with the designated Department Clerk, pursuant to section 120.52(7),
Florida Statutes, receipt of which is hereby acknowledged.

T. Marion 1/29/01
Clerk Date

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF INTENT TO ISSUE PERMIT**

The Department of Environmental Protection gives notice of its intent to issue a permit File No. 13-0171515-001 to do the following: a) install a precasted concrete manhole within the parking lot of the Newport Hotel and Resort; b) install three 5-inch diameter steel subaqueous conduits and two associated fiber-optic cables under the Atlantic Ocean by horizontal directional drilling (HDD); and c) install two cables to serve COM TECH International Cable Corporation's ARCOS-1 System connecting the Florida cable system with the Bahamas, the Turks and Caicos Islands, the Dominican Republic, Puerto Rico, and the South and Central Americas. The third remaining conduit will not have a cable installed at this time.

The three steel conduits or drill pipes will be installed by HDD from the upland manhole beneath the ocean floor to an exit point or punch out site approximately 2,200 feet offshore. The HDD technique that will be employed in this project is referred to as "drill and leave" methodology, meaning the drilling pipe will be left in place and serve as the cable conduit. Following completion of the bored conduits, two fiber optic cables will be laid from east to west from the state's 3-mile limit along the ocean bottom, crossing hardbottom and three coral reef systems, and terminating at the HDD punch out sites.

In order to offset the impacts to coral reef and hardbottom communities resulting from the laying of the two cables authorized in the permit, the permittee shall place a minimum of thirty (30) DERM-type reef modules within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Each module will provide approximately 54 square feet of mitigation for a total of 1,620 square feet. The number of modules required may increase should the post lay HREA indicate that more than 30 modules are needed to fully compensate for actual impacts.

The project is located within the Atlantic Ocean (Class III Waters) adjacent to the Newport Hotel and Resort on the corner of State Road 826 and Collins Avenue, City of Sunny Isles Beach (Section 11, Township 52 South, Range 42 East) in Miami-Dade County. The three HDD punch out sites are located approximately between Latitude 25°55'55"N, Longitude 80°06'57"W and Latitude 25°55'52"N, Longitude 80°06'57"W on the seafloor. The path of the cables laid on the sea floor will be shown in sketches that will accompany the easement associated with this project.

The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Florida Department of Environmental Protection, Department of Environmental Protection, Southeast District, Submerged Lands & Environmental Resources Program, P.O. Box 15425, West Palm Beach, Florida 33416.

The Department will issue the permit with attached conditions unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57 of the Florida Statutes, before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within 14 days [of publication of the notice or

receipt of the written notice, whichever occurs first. Under section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition or request for mediation within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

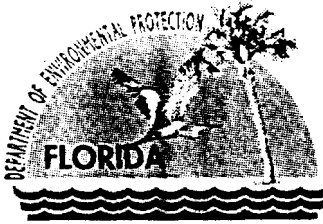
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of how and when each petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, as well as the rules or statutes which entitle the petitioner to relief; and
- (f) A demand for relief.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

Any party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department.



Jeb Bush
Governor

Department of Environmental Protection

Southeast District
P.O. Box 15425
West Palm Beach, Florida 33416

David B. Struhs
Secretary

CONSOLIDATED ENVIRONMENTAL RESOURCE PERMIT AND INTENT TO GRANT SOVEREIGN SUBMERGED LANDS AUTHORIZATION

PERMITTEE/AUTHORIZED ENTITY:

COM TECH International Cable Corporation
c/o Jeff Fleisher, Vice President
2977 McFarlane Road, Suite 300
Coconut Grove, FL 33131

Permit/Authorization No.: 13-0171515-001

Date of Issue:

Expiration Date of

Construction Phase:

County: Miami-Dade

Project: ARCOS-1 System Conduit and Cable
Installations

This permit is issued under the authority of Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). The activity is not exempt from the requirement to obtain an Environmental Resource Permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

ACTIVITY DESCRIPTION

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The purpose of the project is to do the following: a) install a precast concrete manhole within the parking lot of the Newport Hotel and Resort; b) install three 5-inch diameter steel subaqueous conduits and two associated fiber-optic cables under the Atlantic Ocean by horizontal directional drilling (HDD); and c) install two cables to serve COM TECH International Cable Corporation's ARCOS-1 System connecting the Florida cable system with the Bahamas, the Turks and Caicos Islands, the Dominican Republic, Puerto Rico, and the South and Central Americas. The third remaining conduit is reserved for future cable repair or replacement.

The direction drilling will begin from a 16-ft. by 16-ft. by 10-ft. precast concrete manhole within the parking lot of the Newport Hotel and Resort. During dewatering for the manhole construction, ground water will be discharged to the storm sewer on Collins Avenue which ultimately will discharge into deep injection wells. The three steel conduits or drill pipes will be installed by HDD from the upland manhole beneath the ocean floor to an exit point or punch out site approximately 2,200 feet offshore. The HDD technique that will be employed in this project is referred to as "drill and leave" methodology, meaning the drilling pipe will be left in place and serve as the cable conduit. Divers will then excavate around the HDD exit location using hand-held hydraulic seawater hoses to excavate an area with a 15-foot diameter maximum opening to a depth of six to nine feet below the seafloor. Sand bags will be placed on the sides of the excavation to stabilize the area. The drill pipe or conduit will be cut off at a depth of three to six feet below the seafloor. The conduit will be capped and reburied with sandbags.

"More Protection, Less Process"

Printed on recycled paper.

Following completion of the bored conduits, two fiber optic cables will be laid from east to west from the state's 3-mile limit along the ocean bottom, crossing hardbottom and three coral reef systems, and terminating at the HDD punch out sites. Divers shall remove the sandbags covering the capped conduit and the cable shall be installed through the conduit pipe.

The NOAA Habitat Equivalency Analysis model (HEA) was employed to estimate the required area for mitigation or compensatory habitat creation associated with natural resource impacts within the cable corridor. Using available data from past fiber optic cable deployments and also using a "worst case" impact scenario, the HEA indicated that approximately 1 to 4.88 modules per cable would compensate for anticipated impacts. In order to offset the impacts to coral reef and hardbottom communities, the permittee shall place a minimum of thirty (30) DERM-type artificial reef modules, 15 modules per cable, as added public interest. These modules will be placed on the ocean floor within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Each module will provide approximately 54 square feet of mitigation for a total of 1,620 square feet. The permittee shall re-run the HEA based on actual post lay measurements and adjust mitigation upwards if such calculations indicate that more than 30 modules are needed to fully compensate for actual impacts. Differential Global Positioning System (DGPS) coordinates will be provided for the mitigation site to mark the area for future monitoring.

ACTIVITY LOCATION:

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The project is located within the Atlantic Ocean (Class III Waters) adjacent to the Newport Hotel and Resort on the corner of State Road 826 and Collins Avenue, City of Sunny Isles Beach (Section 11, Township 52 South, Range 42 East) in Miami-Dade County. The three HDD punch out sites are located approximately between Latitude 25° 55' 55" N, Longitude 80° 06' 57" W and Latitude 25° 55' 52" N, Longitude 80° 06' 57" W on the seafloor. The path of the cables laid on the sea floor will be shown in sketches that will accompany the easement associated with this project.

This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

This permit also constitutes certification of compliance with water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. In addition to the above, this proprietary authorization has been reviewed in accordance with Chapter 253, F.S., Chapter 18-21, and Section 62-343.075, F.A.C.

As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity requires a Private Easement for the use of those lands, pursuant to Chapter 253.77, F.S. On January 23, 2001, the Board of Trustees granted authority for the Department to proceed with issuance of a private easement for the use for the subject activity.

The final documents required to execute the private easement have been sent to the Division of State Lands. The Department intends to issue the private easement upon satisfactory execution of those documents. **You may not begin construction of this activity on state-owned, sovereign submerged lands until the private easement has been executed to the satisfaction of the Department.**

Federal authorization for the proposed project is reviewed by DEP pursuant to an agreement between the Department and the U.S. Army Corps of Engineers (Corps). The agreement is outlined in a document titled *Coordination Agreement Between the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection State Programmatic General Permit, Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act*.

Your project has been reviewed for compliance with a State Programmatic General Permit (SPGP). As shown on the attached drawings, the proposed project is **not** consistent with the SPGP program. A copy of your application has been sent to the Corps who may require a separate permit. Failure to obtain their authorization prior to construction could subject you to enforcement action. For further information, contact the Corps directly.

You are hereby advised that authorizations also may be required by other federal, state, and local entities. This authorization does not relieve you from the requirements to obtain all other required permits and authorizations.

The above named permittee is hereby authorized to construct the work shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof. **This permit and authorization to use sovereign submerged lands is subject to the limits, conditions, and locations of work shown in the attached drawings, and is also subject to the attached 19 General Conditions and 19 Specific Conditions, which are a binding part of this permit and authorization.** You are advised to read and understand these drawings and conditions prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these drawings and conditions prior to commencing the authorized activities. Failure to comply with all drawings and conditions shall constitute grounds for revocation of the permit and appropriate enforcement action.

Operation of the facility is not authorized except when determined to be in conformance with all applicable rules and with the general and specific conditions of this permit/certification/authorization, as specifically described below.

GENERAL CONDITIONS:

(1) All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.

(2) This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by the Department staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.

(3) Activities approved by this permit shall be conducted in a manner which does not cause violations of state water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

(4) The permittee shall notify the Department of the anticipated construction start date within 30 days of the date that this permit is issued. **At least 48 hours prior to commencement** of activity authorized by this permit, the permittee shall submit to the Department an "Environmental Resource Permit Construction Commencement" notice (Form No. 62-343.900(3), F.A.C.) indicating the actual start date and the expected completion date.

(5) When the duration of construction will exceed one year, the permittee shall submit construction status reports to the Department on an annual basis utilizing an "Annual Status Report Form" (Form No. 62-343.900(4), F.A.C.). Status Report Forms shall be submitted the following June of each year.

(6) **Within 30 days after completion of construction** of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the supplied "Environmental Resource Permit As-Built Certification by a Registered Professional" (Form No. 62-343.900(5), F.A.C.). The statement of completion and certification shall be based on on-site observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the Department that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.

(7) The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, has submitted a **"Request for Transfer of Environmental Resource Permit Construction Phase to Operation Phase"** (Form No. 62-343.900(7), F.A.C.); the Department determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the Department in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the Department, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 62-343.110(1)(d), F.A.C., the permittee shall be liable for compliance with the terms of the permit.

(8) Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.

(9) For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the Department along with any other final operation and maintenance documents required by sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District - August 1995, prior to lot or unit sales or prior to the completion of the system, whichever occurs first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State where appropriate. For those systems which are proposed to be maintained by the county or municipal entities, final operation and maintenance documents must be received by the Department when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.

(10) Should any other regulatory agency require changes to the permitted system, the permittee shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.

(11) This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C.

(12) The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.

(13) The permittee is advised that the rules of the South Florida Water Management District require the permittee to obtain a water use permit from the South Florida Water Management District prior to construction dewatering, unless the work qualifies for a general permit pursuant to subsection 40E-20.302(4), F.A.C., also known as the "No Notice" rule.

(14) The permittee shall hold and save the Department harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.

(15) Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under section 373.421(2), F.S., provides otherwise.

(16) The permittee shall notify the Department in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which

the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of section 62-343.130, F.A.C. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

(17) Upon reasonable notice to the permittee, Department authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

(18) If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate Department office.

(19) The permittee shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.

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SPECIFIC CONDITIONS:

(1) The terms, conditions, and provisions of the required private easement shall be met. Construction of this activity shall not commence on sovereign submerged lands, title to which is held by the Board of Trustees of the Internal Improvement Trust Fund, until all required easement documents have been executed to the satisfaction of the Department.

(2) The project drawings, sheets 1 through 6, Exhibit I, and DEP forms 62.343.900(3), (4), (5), and (7) are attached to and become part of this permit.

(3) After selection of the contractor to perform the authorized activities and prior to the initiation of any work authorized by this permit, the permittee (or authorized agent) and the contractor shall attend a pre-construction conference with a representative of the Department. The permittee shall contact the Department in writing to schedule the conference. Department of Environmental Protection, Southeast District, Submerged Lands & Environmental Resources Program, Compliance/Enforcement Section, P.O. Box 15425, West Palm Beach, Florida 33416.

(4) All HDD activities, vessel approach, cable pull and vessel departure shall take place during daylight hours only.

(5) The permittee shall implement the following Best Management Practices (BMPs) to minimize the potential for adverse environmental impacts during *conduit* installations:

- A. Best management practices for erosion control within the staging area shall be implemented and maintained at all times during construction of the manhole and drilling operations to prevent siltation and turbid discharges in excess of State water quality standards pursuant to Rule 62-302, F.A.C. Methods shall include, but are not limited to, the use of staked hay bales, staked filter cloth, sodding, seeding, and mulching; staged construction; and the installation of turbidity screens around the immediate project site. Dewatering will require a permit from the South Florida Water Management District.
- B. The incorporation of non-toxic fluorescent dyes in the drilling lubricant shall be used as an additional method of monitoring for bentonite releases or frac-outs. Details of the fluorometry monitoring method shall be submitted to the Department prior to or during the preconstruction meeting. Should the detection of dye occur, the following measures will be taken:

1. Immediately conduct a visual inspection of both terrestrial and subaqueous portions of the HDD corridor and any adjacent reef or hardbottom communities within 500-ft. of the corridor. Notify the DEP-Southeast District Environmental Resource Compliance/Enforcement Section at 561/681-6643 if a frac-out is detected.
 2. Should the release of drilling materials occur on the ocean floor, a cleanup vessel will be dispatched to the frac-out site within 24 hours of detection to vacuum pump the material from the bottom into filter bags for disposal.
- C. To provide an additional level of resource protection, the volume of bentonite in the drill string will be monitored at all times during the directional drilling operation. Should a drop in volume of bentonite occur, the following measures will be taken:
1. Immediately conduct a visual inspection of both terrestrial and subaqueous portions of the HDD corridor and any adjacent reef or hardbottom communities within 500-ft. of the corridor. Notify the DEP-Southeast District Environmental Resource Compliance/Enforcement Section at 561/681-6643 if a frac-out is detected.
 2. Should the release of drilling materials occur on land, a sediment fence shall be constructed around the site and the material shall be removed by vacuum truck positioned landward of the beach and dune system as not to disturb sea turtle nests.
 3. Divers shall be present during the drill operations to monitor the sea floor for any evidence of bentonite onto the sea floor.
 4. Should the release of drilling materials occur on the ocean floor, a cleanup vessel will be dispatched to the frac-out site within 24 hours to vacuum pump the material from the bottom into filter bags for disposal.
- D. In order to minimize the possibility of a bentonite release during punch out, the site project manager shall consider the use of water in place of bentonite during the last 30 to 50 feet of the directional bore. The HDD operator shall stop the flow of recirculated bentonite and the bore hole shall be flushed with water to remove the bentonite. Once the drill string is clear of bentonite, drilling will continue using only water as the boring medium. The first monitoring report submitted to the Department will discuss if water was used during the final stages of drilling and if not, the reasons why it wasn't feasible.
- (6) With the exception of the non-toxic fluorescent dyes, the use of additives to the drilling lubricant, bentonite, are prohibited.
- (7) Within 48 hours of each HDD punch out, the permittee shall perform a visual inspection of the seafloor above the subaqueous portions of the HDD corridor to inspect for bentonite releases or frac-outs. Within 30 days of each HDD punch out, the permittee shall submit a written summary to the DEP-Southeast District Environmental Resource Compliance/Enforcement Section, P.O. Box 15425, West Palm Beach, Florida 33416. The permittee shall include the following information:
1. a timeline of the individual conduit installations
 2. any complications encountered during conduit installations

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3. results of conduit corridor and adjacent reef/hardbottom communities dive inspections
 4. details of any bentonite clean-up operation
 5. discussion of possible causes of bentonite discharges (frac-outs); and
 6. suggestions for future frac-out prevention measures
- (8) Within 30 days of the manhole installation, the permittee shall fully restore the staging area to its original condition. Paved surfaces shall be repaired and unpaved surface areas will be replanted with non-exotic invasive vegetation.
- (9) With the exception of the horizontal drilling phase of the project, no construction, operation, transportation or storage of material/equipment are on the beach during the marine turtle nesting season (1 March through 31 October).
- (10) No temporary lighting of the construction area visible from any part of the beach is authorized at any time during marine turtle nesting season (1 March through 31 October). No permanent lighting is authorized.
- (11) The dredged material from the HDD shall be dried and then transported to the Medley Landfill & Recycling Center for disposal. No discharge of water or dredged material to waters of the state shall be allowed during transport. Copies of the Medley Landfill disposal receipts shall be submitted within 30 days of completion of dredging.
- (12) The permittee shall implement the following Best Management Practices (BMPs) to minimize the potential for adverse environmental impacts during the *cable* installations:
- A. Cable shall be laid during sea and wind conditions that permit the cable-laying vessels to maximize position and speed control.
 - B. To the extent practicable and considering weather, safety, and navigational control, the speed of the cable-laying vessel shall not exceed 2 knots speed over ground (S.O.G.).
 - C. The permittee shall ensure that vessels associated with the cable project are not anchored on hard bottom and that divers will visually inspect the bottom before anchoring.
 - D. The permittee shall ensure that the cable landing ship will remain stationary approximately 7,400 feet off shore. From this location landward, the cable shall be floated toward the bore pipe conduits supported by barges and small boats with drafts no deeper than 6 feet. Once the cable is near the bore exit site, the cable shall be installed through the bore pipe with the aid of divers.
- (13) The permittee shall provide written notification to DEP-Southeast District Environmental Resource Compliance/Enforcement Section at least 3 working days prior to laying all of the authorized cables across hard bottom ecosystems. The notification will consist of an approximate time frame for the laying of the cables. Verbal confirmation to DEP compliance staff (561/681-6643) shall be given 24 hours prior to crossing the hard bottom communities.

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(14) Within 30 days following the installation of each cable or any removal or replacement of cable where it crosses hard-bottom ecosystems, the permittee shall begin evaluation, remediation, and monitoring of coral impacts in accordance with the attached plans (Exhibit I). Verbal confirmation to DEP compliance staff (561/681-6643) shall be given 48 hours prior to initiating such remediation of coral impacts.

(15) The permittee shall perform all monitoring and restoration activities in accordance with the attached plans (Exhibit I). Within 30 days after installation of the cable over hard bottom, the permittee shall provide the Department with an "as-laid" video of the cable where it lies on coral reef and hardbottom communities.

The following parameters will be used during this video assessment:

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1. The video camera will be on wide-angle mode, and the distance from the seafloor-cable to the video camera will be 40 to 50 cm.
2. The camera will be at perpendicular (straight down), relative to the seafloor-cable.
3. The video will be taken at a swim speed that allows for clear images (approximately 12-ft. to 15-ft. per minute).
4. If specific impacts are encountered, the camera operator will halt the survey and take panoramic as well as close up views of the injuries.

(16) Within 60 days after each cable is installed from the bore pipe end to the state's three mile limit, permittee shall revise the easement area by submitting a Specific Purpose Survey prepared to the minimum technical standards found in Chapter 61G17-6 F.A.C. Each installed cable shall be described by metes and bounds as a 10-foot easement, being 5 feet either side of the center of the cable as laid. The description contained on the specific purpose survey may contain coordinates derived from Differential Global Positioning System (DGPS) instruments; however, these coordinates shall be accessories to a bearing and distance based (metes & bounds) description. All descriptions shall be tied to a section corner or a recorded corner of a subdivision at the bore pipe end. The description shall contain a call to referencing the state's territorial (three mile) limits at the terminus of the easement. The datum shall be clearly defined in the description.

(17) The permittee shall notify the Department within 48 hours prior to repairing any of the cables authorized under this permit. The permittee shall conduct any and all cable repairs for all sections removed from the ocean floor according to the criteria set forth in Specific Conditions No. 12-16. These repairs shall be treated as new cable lays.

(18) Mitigation work shall commence within 90 days of completion of the cable installations. In order to offset the impacts to coral reef and hardbottom communities resulting from the laying of the two cables authorized in this permit, the permittee shall place a minimum of thirty (30) DERM-type reef modules within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Each module will provide approximately 54 square feet of mitigation for a total of 1,620 square feet. The number of modules required may increase should the post lay HEA indicate that more than 30 modules are needed to fully compensate for actual impacts. The permittee shall adhere to the following criteria in order to minimize the potential for adverse environmental impacts during the installation of the reef modules:

- A. The material to be used shall be clean concrete or rock or prefabricated structures that are a mixture of clean concrete and heavy gauge steel.
 - B. The material shall be free of soils, oils and greases, debris, litter, putrescible substances or other pollutants.
 - C. The material shall be firmly anchored to the bottom and shall not be indiscriminately dumped.
 - D. The material shall be placed so that the top of the reef does not exceed 1/2 the distance from the bottom to the surface of the water unless a greater distance from the surface is required for safe navigation. At no time shall the distance between the top of the reef and the surface of the water be less than 6 feet.
 - E. The site shall be marked with perimeter buoys during construction to ensure that no material is deposited outside of the site.
 - F. The permittee shall notify the National Ocean Service, National Oceanographic and Atmospheric Association, U.S. Department of Commerce, Rockville, Maryland, and the Florida Fish and Wildlife Conservation Commission, Office of Environmental Services, of the precise location of the reef within 30 days of placement of the reef material.
- (19) The permittee shall monitor the coral substrate modules (artificial reef modules), after they are deployed, for stability and evaluate 10 (10 of the 30 modules) of the deployed coral substrate modules (artificial reef modules) for juvenile coral recruitment. (The number of modules required may increase should the post lay HEA indicate that more than 30 modules are needed to fully compensate for actual impacts) A written narrative report and video footage shall be submitted. The report shall be submitted as follows: baseline (within 30 days after deployment), six months after deployment, one-year after deployment, two-years after deployment and five-years after deployment.

Executed in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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Melissa L. Meeker Date
Director of District Management
Southeast District

MLM/mcm/tr/jb
Copies furnished to:

U. S. Army Corps of Engineers
Brian Flynn, Coastal Programs Administrator, Miami-Dade DERM
Kim Dupree, DEP, Division of State Lands
Florida Marine Patrol

Permittee: COM TECH International Cable Corporation
File No.: 13-0171515-001
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Karen Moody, FFWCC, Bureau of Protected Species
Walt Jaap, FMRI, 100 8th Avenue SE, St. Petersburg, FL 333432
Alexander Stone, Reefkeeper International, 2809 Bird Ave., Miami, FL 33133
Steve Medina, PEER, P. O. Box 247, Ft. Walton Beach, FL 32549-0247
Dan Meyer, PEER, 2001 S Street, NW - Suite 570, Washington, D.C. 20009
Larry Zuckerman, 4719 Satinwood Trail, Coconut Creek, FL 33063
Stephanie Clark, Cry of the Water, P.O. Box 8143, Coral Springs, FL 33075
Michael S. Tammaro, P.O. Box 150, West Palm Beach, FL 33404

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this permit and authorization to use sovereign submerged lands, including all copies, were mailed before the close of business on _____, to the above listed persons.

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FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7) of the
Florida Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk

Date

Prepared by Jayne E. Bergstrom.

11 pages attached

Exhibit I

MITIGATION PLAN FOR THE DEPLOYMENT OF TELECOMMUNICATION CABLES IN THE NEARSHORE WATERS OFF THE CITY OF SUNNY ISLES, MIAMI-DADE COUNTY, FLORIDA

This plan proposes methods of mitigating the expected and potential impacts of installing submarine cables off the City of Sunny Isles, Florida, pursuant Environmental Resource Permit # 13-0171515-001 requested by COM TECH International Cable Corporation. In brief, the mitigation will consist of :

- (1) compensation for impacts via placement of a minimum of thirty (30) DERM-type artificial reef modules within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Should the re-run of the HEA indicate that more than 30 modules are needed to fully compensate for actual impacts, the permittee shall adjust mitigation upwards.
- (2) restoration, promptly after the cable is laid, via divers freeing by hand any soft corals pinned under the cables and moving the cable to the extent possible off of stony corals; and
- (3) restoration via divers cementing to the bottom any stony corals that may be dislodged by cable placement.

In this mitigation plan, language and techniques will be used that have been developed and are accepted by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for natural resource damage assessment claims (NOAA, 1996). The methods proposed in this plan have been developed by NOAA to ensure that impacts (injury) to the environment are adequately compensated.

Background

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The purpose of the project is to do the following: a) install a precast concrete manhole within the parking lot of the Newport Hotel and Resort; b) install three 5-inch diameter steel subaqueous conduits and two associated fiber-optic cables under the Atlantic Ocean by horizontal directional drilling (HDD); and c) install two cables to serve COM TECH International Cable Corporation's ARCOS-1 System connecting the Florida cable system with the Bahamas, the Turks and Caicos Islands, the Dominican Republic, Puerto Rico, and the South and Central Americas. The third remaining conduit will not have a cable installed at this time.

The directional drilling will begin from a 16-ft. by 16-ft. by 10-ft. precast, concrete manhole within the parking lot of the Newport Hotel and Resort. During dewatering for the manhole construction, ground water will be discharged to the storm sewer on Collins Avenue which ultimately will discharge into deep injection wells. The three steel conduits or drill pipes will be installed by HDD from the upland manhole beneath the ocean floor to an exit point or punch out site approximately 2,200 feet offshore. The HDD technique that will be employed in this project is referred to as "drill and leave" methodology, meaning the drilling pipe will be left in place and serve as the cable conduit. Divers will then excavate around the HDD exit location using hand-held hydraulic seawater hoses to excavate an area with a maximum 15-foot-diameter opening to a

depth of six to nine feet below the seafloor. Sand bags will be placed on the sides of the excavation to stabilize the area. The drill pipe or conduit will be cut off at a depth of three to six feet below the seafloor. The conduit will be capped and reburied with sandbags.

Following completion of the bored conduits, two fiber optic cables will be laid from east to west from the state's 3-mile limit along the ocean bottom, crossing hardbottom and three coral reef systems, and terminating at the HDD punch out sites. Divers shall remove the sandbags covering the capped conduit and the cable shall be installed through the conduit pipe.

In order to offset the impacts to coral reef and hardbottom communities, the permittee shall place a minimum of thirty (30) DERM-type artificial reef modules within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Each module will provide approximately 54 square feet of mitigation for a total of 1,620 square feet. The permittee shall re-run the HEA based on actual, post lay measurements and adjust mitigation upwards, if such calculations indicate that more than 30 modules are needed to fully compensate for actual impacts. Differential Global Positioning System (DGPS) coordinates will be provided for the mitigation site to mark the area for future monitoring.

Remediation

A post-lay inspection will be used to free any soft corals that are pinned under the cables and to adjust the cables, if possible, from any stony coral colonies that are directly impacted or displaced by the cable. A post-lay video of the cables crossing the hard bottom areas will be performed in conjunction with this post-lay inspection. During this inspection, corals in need of repair will be identified and tagged. Identification and repair of coral colonies will proceed in accordance to the protocols established in the assessment techniques in Appendix A. A report will be generated identifying location and number of displaced corals after the placement of each cable.

Monitoring

DRAFT

Under this proposal, in addition to the post-lay inspections described above, the applicant will be responsible for periodic monitoring of any coral repair performed, for five years following the remediation recently completed. Specifically, monitoring will be performed six months after the detailed assessment survey (baseline survey) and one, two, and five years after that initial assessment and repair. The monitoring will include the inspection of a representative portion of the cables over hard bottom to inspect the overall survivability of repaired corals. The repaired corals from any additional cables will be combined with this program. After that five-year period ends in mid-2006, such monitoring will terminate if the applicant can demonstrate that the success rate of the coral reattachment program is so consistent and predictable that additional monitoring is unnecessary as additional confirmation.

Reporting

Reporting on the assessment and repair process will include weekly status reports during and after each cable lay until the restoration process is complete for a particular cable, plus a

final comprehensive report on that process for each cable. Such weekly status reports will include a baseline report describing the final proposed methodology and schedule for assessment, repair, and location of the repaired corals. Subsequent reports will describe status, refined schedules, and any changes in the proposed methodology. The final status report will provide an overall schedule of activities and numbers, location, and species repaired.

The final comprehensive report will include the results of the assessment and repair of the displaced corals. The report will include a full description of the cables over the reef areas.

In addition, a report will be prepared after each monitoring event during the five-year follow-up process. The report will include a description of monitoring techniques and results.

Mitigation through Artificial Reef Construction as Compensation

In order to offset the impacts to coral reef and hardbottom communities, the permittee shall place a minimum of thirty (30) DERM-type artificial reef modules within Miami-Dade's Sunny Isles/Haulover Artificial Reef Site. Each module will provide approximately 54 square feet of mitigation for a total of 1,620 square feet. The permittee shall re-run the HEA based on actual, post lay measurements and adjust mitigation upwards, if such calculations indicate that more than 30 modules are needed to fully compensate for actual impacts.

The permittee shall monitor the coral substrate modules (artificial reef modules), after they are deployed, for stability and evaluate the deployed coral substrate modules (artificial reef modules) for juvenile coral recruitment. A written narrative report and video footage shall be submitted. The report shall be submitted as follows: baseline (within 30 days after deployment), six months after deployment, one, two, and five years after deployment.

DRAFT

Appendix A

ASSESSMENT, REPAIR, MONITORING, AND REPORTING OF STONY CORAL IMPACTS ALONG TELECOMMUNICATION CABLES IN MIAMI-DADE COUNTY, FLORIDA

ASSESSMENT

The following techniques will be used to assess the impacts to stony corals and to locate the affected corals along each cable route. These techniques will be used to assess the impacts of both the north and south ARCOS-1 cables authorized under this permit.

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Types of Impacts

From the agency comments, there seems to be five different types of potential coral impacts that should be located and assessed.

1. **Cable over coral** - This is a situation where the cable is located over but not touching the coral. The size (diameter) and species of each coral will be recorded along with the distance (length) the cable covers the coral.
2. **Cable touching coral** - This is a situation where the cable has been laid over a coral and is touching the coral. The size (diameter) and species of each coral will be recorded along with the distance (length) the cable is touching the coral.
3. **Cable abrading coral** - This is a situation where the cable is laying on a coral and has abraded the coral. The size (diameter) and species of coral will be recorded. The area of abrasion will be recorded. As above, other impacts to the coral, as appropriate, will be recorded.
4. **Coral abraded but not currently being abraded** - This is a situation where the coral has been abraded during the installation process but the cable is not currently abrading the coral. The size (diameter) and species of coral will be recorded. The area of abrasion will be recorded.
5. **Dislocated corals** - This is a situation where the coral has been dislocated from the hard bottom. The size (diameter) and species of each coral will be recorded.

During the assessment process, typical representatives of each of these types will be photographed. The location of each impacted coral will be recorded (see below) and temporarily marked using survey tape. The potential for moving the cable from the impacted coral will be considered during the assessment process. If moving the cable can result in removing corals from impact types 1 and/or 2 then the coral will not be considered in this assessment process. If removing the cable switches a coral from impact type 3 to impact type 4, this will be noted during the assessment.

During this assessment process the width and depth of the reef along the cable corridor will be recorded. This information will be used along with the Differential Global Positioning System (DGPS) coordinates to create plan view, and three-dimensional views of the cables over the reef areas, as needed.

Location

The use of the cable itself to locate affected corals along the cable route is logical. A nearshore starting point on each reef will be selected landward of any impacts to corals. A monument will be established at the starting point (e.g., an eyebolt with a marker tag and small subsurface buoy) and at 300-ft intervals along the cable. Latitude and longitude of each monument will be recorded using the DGPS. A measured tape will be used to locate affected corals along the cable from each monument, landward to seaward. Any affected corals located off of the cable will be measured along the cable and at a 90° angle from the cable. This method will provide the most accurate system for relocating any particular affected coral. DGPS coordinates can be used to relocate a particular monument and measured tape can be used to relocate any particular affected coral.

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Repair

The only types of impacted corals that may require repair are those corals that have been dislocated (Type 5, above) and corals that are being abraded (Type 3, above) and are determined during the assessment to be in need of being relocated. Criteria for moving any corals will include the amount of abrasion and the ability to move the coral without causing additional impacts. During the assessment process, any corals, which are determined to fulfill the requirements to be repaired and/or relocated, will be tagged and located, as above. Specific tagging will be used to indicate that the particular coral is to be repaired.

As indicated above, consideration for moving the cable to lessen the impact will be given in the field. If any questionable instances arise, the agencies will be consulted for a recommendation.

All dislocated corals will be returned to their original location if that can be determined, or as close as possible to that location, but not closer than 3 ft to the cable, and repaired. Abraded corals requiring relocation will also be moved at least 3 ft from the cable. All corals will be secured to the hard bottom using Type II Portland cement. Each reattached coral will be located using the same system as above and tagged.

MONITORING

Monitoring will be performed six months after the initial baseline survey and repair and one, two, and five years after the assessment and repair program. The monitoring will include the inspection of a representative portion of the cables over hard bottom to inspect the overall survivability of repaired corals and corals in the other impact categories. In particular, the survivability of corals in impact category 2 will be subsampled and investigated. The monuments established along the cable corridor will be used to document the stability of the

cable and be used to revisit any particular coral along the corridor to document potential effects of the cable.

REPORTING

Reporting includes weekly status reports during the assessment and repair process and a final comprehensive report on that process. The weekly status reports will include a baseline report describing the final proposed methodology and schedule for assessment, repair, and location of the corals. Subsequent reports will describe status, refined schedules, and any changes in the proposed methodology. The final status report will provide an overall schedule of activities and numbers, location, and species repaired.

The final comprehensive report will include the results of the assessment and repair of the corals. The report will include a full description of the cables over the reef systems. The report will include an analysis of the impacts of the cables over the reef systems and a recommendation for mitigation. Coral substrate modules will be used as mitigation and the information from the assessment will be used to recommend an appropriate number of modules as mitigation for future applications.

A report will be prepared after each monitoring event. The report will include monitoring techniques and results.

DRAFT

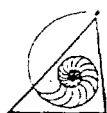
LEGEND

WAFB CABLE ROUTE

RECEIVED

NOV 30 2000

DEPT OF ENV PROT
WEST PALM BEACH



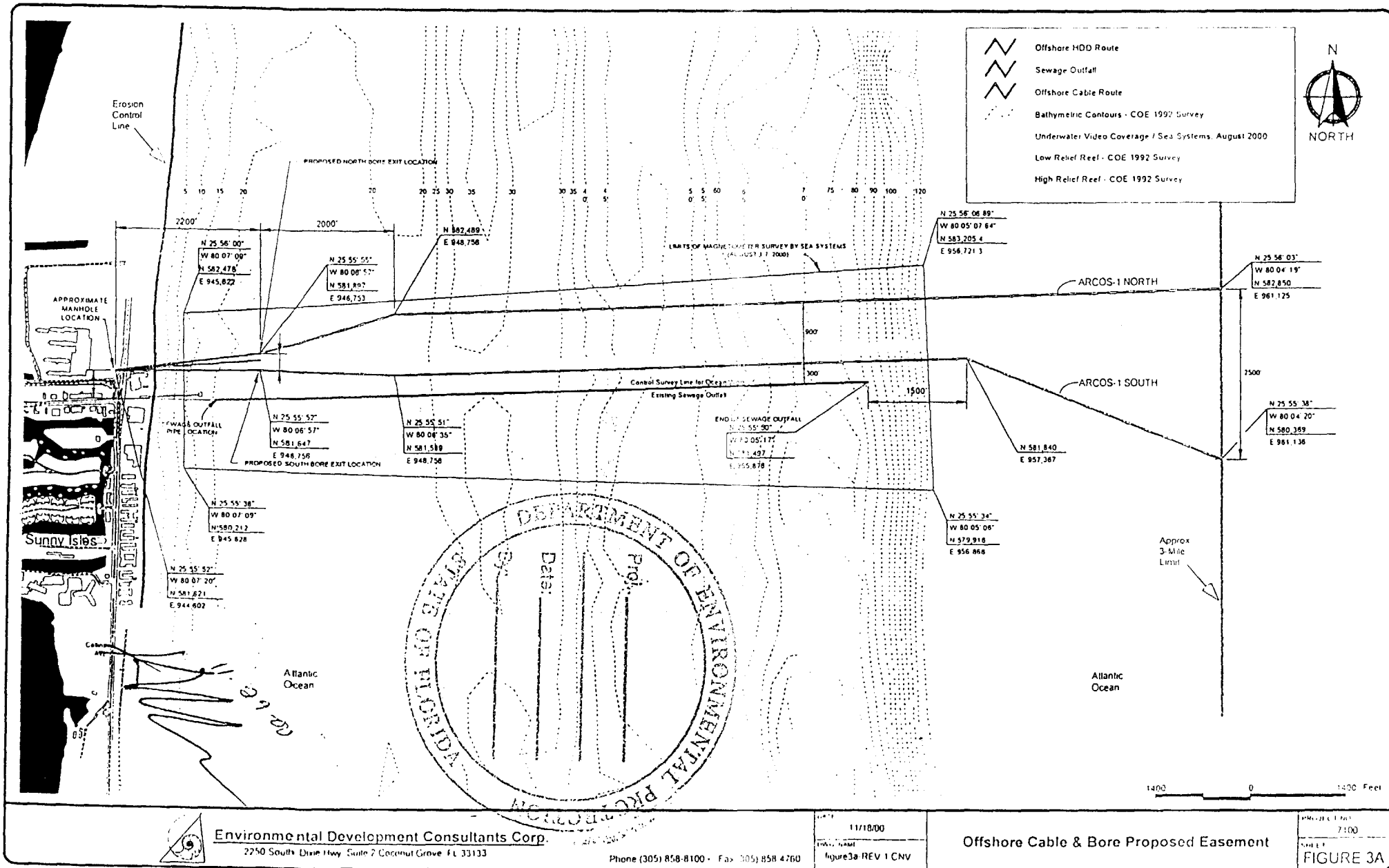
Environmental Development Consultants Corp.

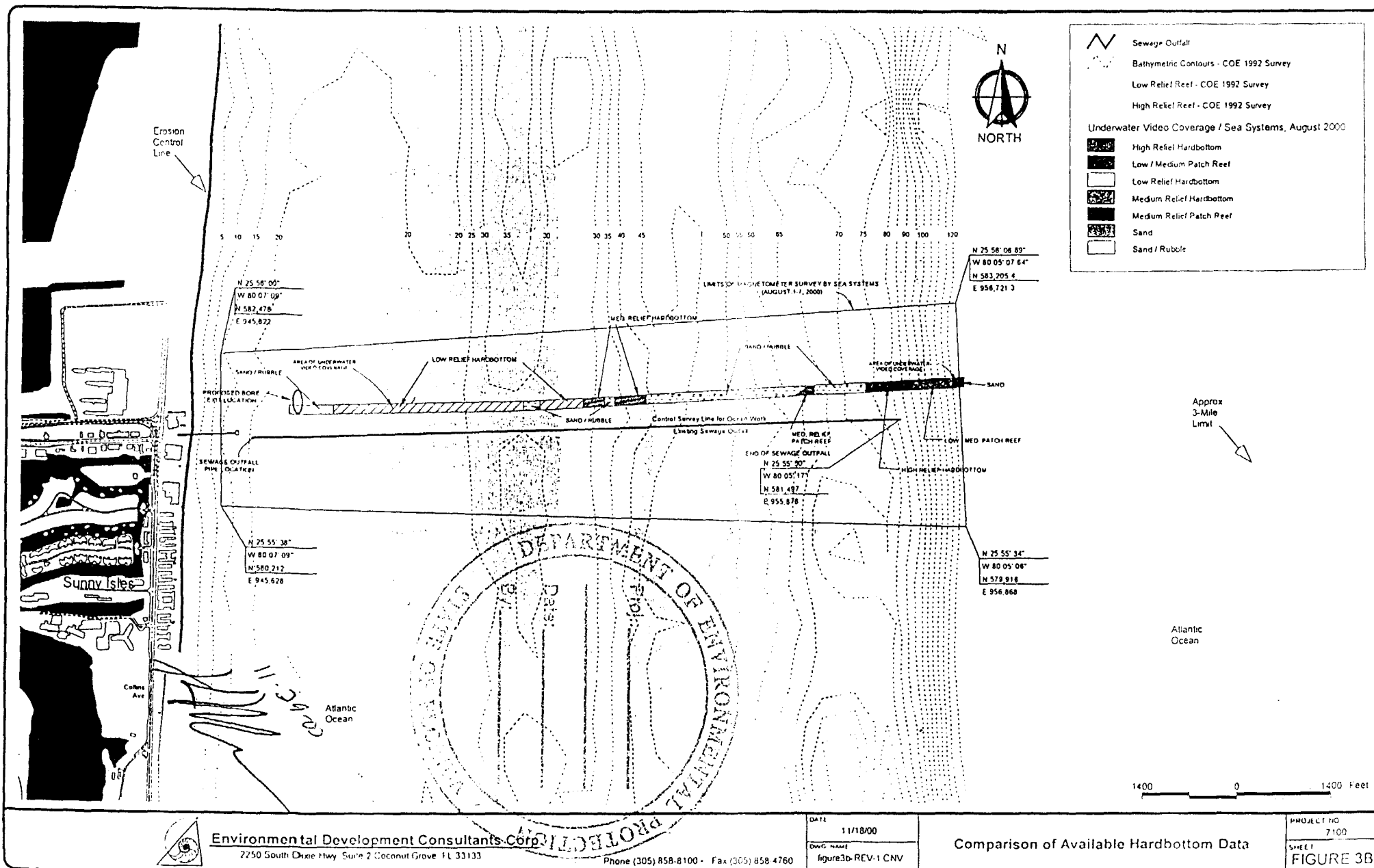
2250 South Dixie Hwy, Suite 2, Coconut Grove, FL 33133

Phone (305) 858-8100 • Fax (305) 858-4760

FIGURE 1

Arcos-1 Cable Route





Environmental Development Consultants, Corp.

2250 South Dixie Hwy. Suite 2 Coconut Grove FL 33133

Phone (305) 858-8100 • Fax (305) 858-4760

DATE

11/18/00

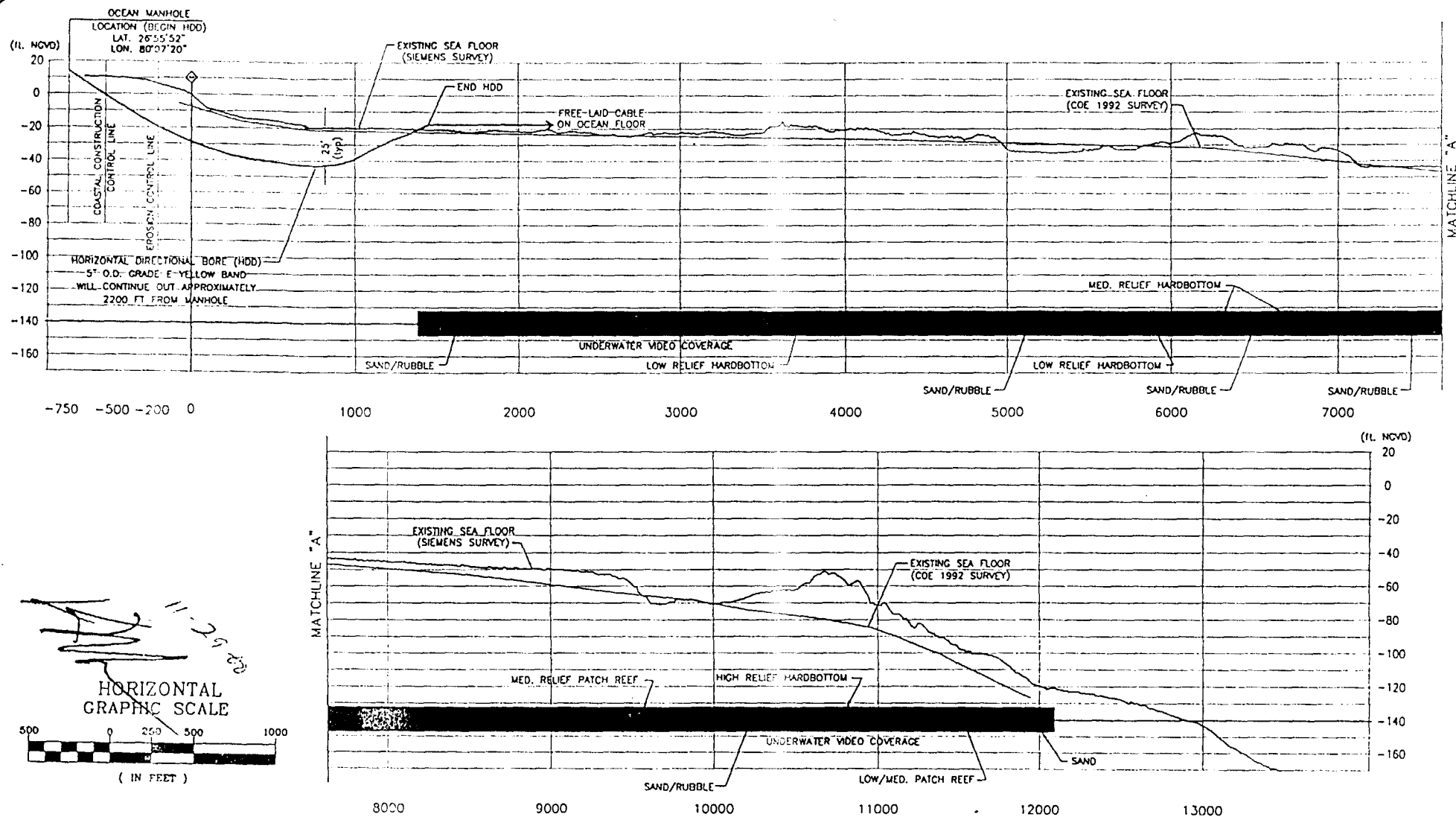
DWG NAME

figure3d-REV-1 CNV

Comparison of Available Hardbottom Data

PROJECT NO
7100

SHEET
FIGURE 3B



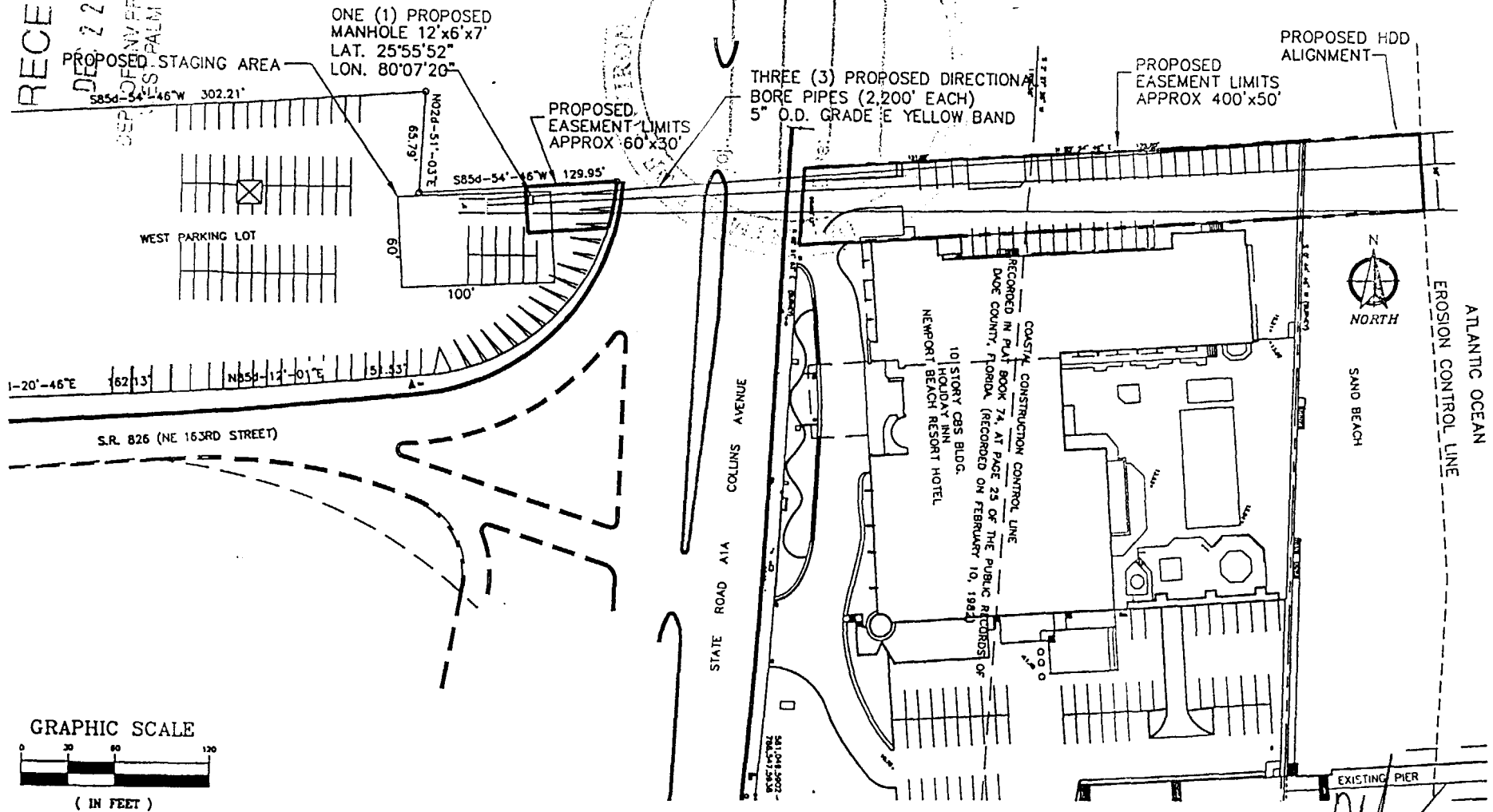
Environmental Development Consultants Corp.
 2250 South Dixie Hwy, Suite 2, Coconut Grove, FL 33133
 Phone (305) 858-8100 - Fax (305) 858-4760

FIGURE - 4
 OFFSHORE PROFILE WITH
 VIDEO COVERAGE OVERLAY

RECEIVED

DEC 22 2000

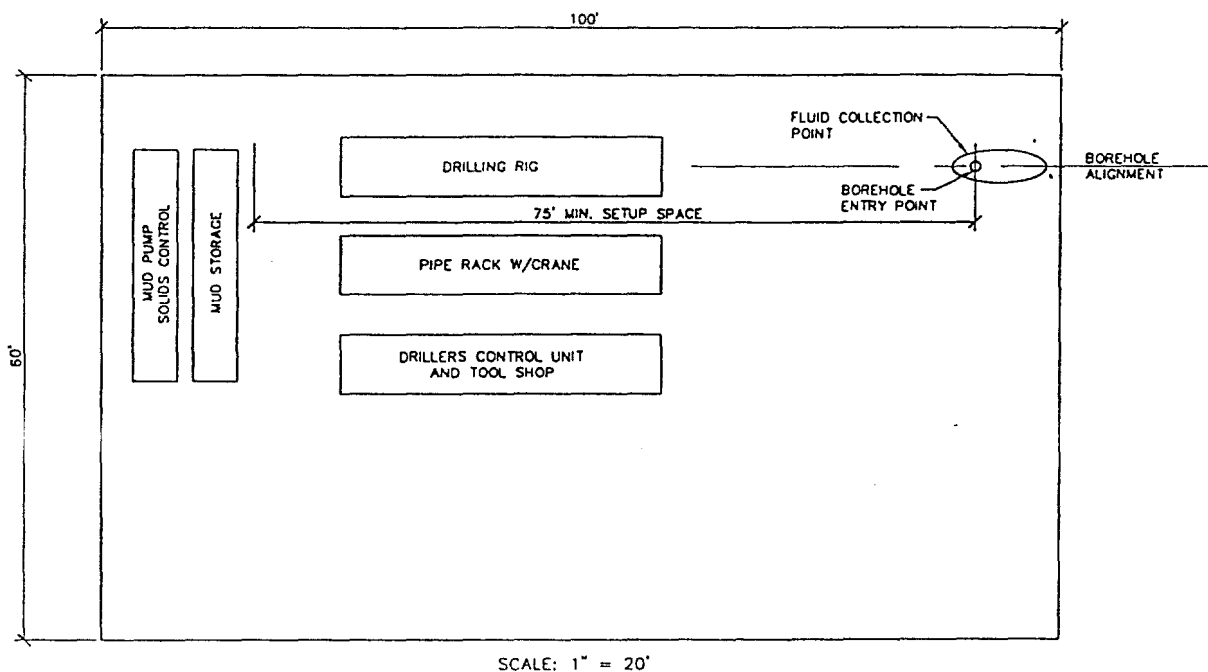
DEPT. OF ENVIRONMENTAL PROTECTION
SUNNY ISLES BEACH



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FIGURE-2
UPLAND SITE PLAN
SUNNY ISLES, FLORIDA
ARCOS 1

12-19-2000



NOTES:

1. THE MUD PUMP, SOLIDS CONTROL, AND MUD STORAGE CAN BE LOCATED AS SPACE ALLOWS.
2. STAGING AREA SHALL HAVE TYPE III SILT FENCE AROUND PERIMETER.
3. SOUND AND VISUAL SCREEN TO BE ERECTED AROUND WORK AREA PER LOCAL CODE.

SEE FIGURE 2 FOR LOCATION OF STAGING AREA



**Environmental Development
Consultants Corp.**

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FIGURE 7

**TYPICAL SITE LAYOUT
FOR SERIES DD-140 RIG
AND EQUIPMENT**